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UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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In re Application of	:	NOTIFICATION
MEARS et al.	:	
Application No.: 09/763,089	:	
PCT No.: PCT/US99/18738	:	
Int. Filing Date: 18 August 1999	:	
Priority Date: 18 August 1998	:	
Attorney Docket No.: 29925-152086	:	
For: APPLICATOR AND DISPENSING	:	
DEVICE USING SAME	:	

This notification is in response to applicants' "RESPONSE TO NOTIFICATION OF A DEFECTIVE RESPONSE" filed 20 July 2001.

BACKGROUND

On 18 August 1999, applicants filed international application PCT/US99/18738, which claimed a priority date of 18 August 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 02 March 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 17 March 2000, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 20 February 2001 (18 February 2001 being a Sunday and 19 February 2001 being a legal public holiday).

On 16 February 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, a first declaration of inventors identifying Harvey Levine and Lawrence Levine as the inventors and a second declaration of inventors identifying Christopher Mears and Richard F. Gray as inventors.

On 15 March 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that the oath or declaration submitted on 16 February 2001 was defective because the inventors were not identified.

On 15 June 2001, applicants submitted a response to the NOTIFICATION OF MISSING

REQUIREMENTS UNDER 35 U.S.C. 371. The response was accompanied by, *inter alia*, copies of two NOTIFICATION OF THE RECORDING OF A CHANGE (Form PCT/IB/306) from the International Bureau, a first page of a declaration identifying Christopher Mears and Richard Gray as inventors and signed by Christopher Mears, another first page of a declaration identifying Christopher Mears and Richard Gray as inventors and signed by Richard Gray, and a second page of a declaration identifying Ralf Zissel, Harvey Levine, and Lawrence Levine as inventors and signed by Ralf Zissel.

On 03 July 2001, the USPTO mailed a NOTIFICATION OF A DEFECTIVE RESPONSE indicating that the response filed by applicants on 15 June 2001 did not complete the requirements set forth in the NOTIFICATION OF MISSING REQUIREMENTS mailed 15 March 2001.

On 20 July 2001, applicants submitted the instant "RESPONSE TO NOTIFICATION OF A DEFECTIVE RESPONSE" indicating that a supplemental response had been filed on 02 July 2001. The submission filed 20 July 2001 also included a second page of a Declaration signed by Harvey Levine and Lawrence Levine. (This submission was also accompanied by a postcard receipt listing a "Supplemental Response" and identifying the above-captioned application number and docket number. However, because this postcard receipt does not list a declaration, it does not serve as *prima facie* evidence that the page of the declaration purportedly filed on 02 July 2001 was actually filed on that day. Accordingly, the date of receipt for this page of the declaration is 20 July 2001.)

DISCUSSION


It is noted that the declarations of inventors filed 15 June 2001 and 20 July 2001 do not comply with 37 CFR 1.497(a)-(b). Each executed declaration must identify all of the inventors. Also, each submitted declaration must be complete, even if executed by only one of the inventors. The declaration executed by Christopher Mears is incomplete in that it fails to identify three of the five inventors. The declaration executed by Richard Gray is incomplete in that it fails to identify three of the five inventors. The declaration executed by Mr. Zissel is incomplete in that it fails to identify two of the inventors and fails to identify the specification which is being executed. The declaration executed by Harvey Levine and Lawrence Levine is incomplete in that it fails to identify two of the inventors and fails to identify the specification which is being executed.

Regarding the declaration signed by Mr. Zissel, it is not sufficient since it contains non-initialed and non-dated alterations. See 37 CFR 1.52(c). Also, this declaration does not comply with 37 CFR 1.497(a)-(b) because it fails to identify the inventor Ralph Zissel. The difference in the names of the inventor in the published international application (Ralph Zissel in the published international application) and the declaration signed by a Mr. Zissel (Ralf Zissel) must be explained. Attention is directed to MPEP § 605.04(c) if there has been a change of name and to MPEP § 605.04(g) if there is a typographical or transliteration error.

CONCLUSION

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.

Since the reply filed 20 July 2001 appears to have been bona fide, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to provide an oath or declaration in compliance with 37 CFR 1.497(a)-(b). Extensions of this time period may be granted under 37 CFR 1.136(a). Failure to timely file a proper reply will result in abandonment of the application.



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